

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF HUMAN RESOURCES MANAGEMENT  
WASHINGTON, D.C. 20250

PERSONNEL BULLETIN NO. 752-1

SUBJECT: Reprisal Actions Against Employees and Others

Attached and incorporated into this bulletin are the Department's policy against reprisal and procedures to follow when employees have engaged in reprisal actions against others. This bulletin results from recommendations made by the Secretary's Civil Rights Action Team. Mission Areas and Agencies must meet their bargaining obligations.

/s/

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Attachment

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DEPARTMENT OF AGRICULTURE  
OFFICE OF HUMAN RESOURCES MANAGEMENT  
POLICY ON REPRISAL  
BULLETIN: 752-1

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## II. POLICY

Subpart A -- General Provisions.

752-101 Definitions.

(a)     "Agency" means a constituent Agency of a Mission Area of the Department.

(b)     "Agency Head" means the Administrator or Chief of an Agency.

(c)     "Department" means the United States Department of Agriculture.

(d)     "Head of Office" includes an "Agency Head," "Staff Office Director," and an Under or Assistant Secretary of Agriculture.

(e)     "Mission Area" means those components of the Department that report to an individual Under or Assistant Secretary of Agriculture.

(f)     "Reprisal" includes within its meaning the word "Retaliation."

A prima facie case of reprisal should be defined as determined by applicable law. For more, see Appendix A, "Defining Reprisal."

(g)     "Staff Office" means an Office not reporting to a Mission Area or Agency (but which may receive administrative services from a Mission Area).

(h)     "Staff Office Director" means the head of a Staff Office.

752-102 Redelegation.

Unless otherwise stated, any authority delegated in this Bulletin may be redelegated to a level of management that has the experience and/or training to administer the delegation.

752-103 Informing employees.

(a)     Within 30 days of publication of this Bulletin or subsequent

changes to it, Agencies will issue each employee a copy or notice of where the employee can review it.

(b) Each new employee shall be furnished, at the time of hiring, a copy of this Bulletin.

(c) With his/her copy of this Bulletin, each employee will receive notification where to direct any questions about the Bulletin.

#### Subpart B -- Reprisal.

##### 752-201 Prohibited Conduct.

(a) This Bulletin is limited to reprisal already made unlawful under a statutory or regulatory provision. It is not intended to create any additional right for employees.

(b) No employee may take reprisal against another, by word or action:

- (i) for filing complaints about safety problems;
- (ii) for filing grievances under either negotiated or administrative grievance systems;
- (iii) for filing complaints of discrimination;
- (iv) for assisting investigators of the Department, Mission Areas, Agencies, or Staff Offices; or
- (v) for engaging in any other protected activity.

(c) No employee may take reprisal against a non-employee (a "customer"), by word or action:

- (i) for exercising his or her right to file an application for assistance of any kind or to seek business of any kind with the Department;
- (ii) for filing any complaint against an employee or against the Department, including but not limited to a complaint of discrimination in program administration; or
- (iii) for engaging in any other activity or relationship with the Department that is granted by, or protected by, law or regulation.

(d) Nothing in (b) or (c) above shall be construed to limit or hinder any employee in the exercise of his or her rights in response to accusations that he or she engaged in acts of reprisal.

##### 752-202 Reporting and investigating reprisal.

(a) Each employee of the Department is required to report actions by other employees that he or she knows, or has a reasonable basis to believe, are prohibited acts of reprisal.

(b) Each Mission Area shall establish one office at the Headquarters level and such field offices as required for efficiency of operations to receive allegations of prohibited acts of reprisal other than allegations of reprisal

arising from Equal Employment Opportunity (EEO) complaints that are addressed below in 752-203. These offices will receive allegations from employees within the Mission Area and from within any Staff Office to which the Mission Area provides administrative services. Each Mission Area will publish to its employees the existence of these offices and how the employees may contact them. It shall be the responsibility of each head of such offices to evaluate each allegation and to:

- (i) Conduct such administrative inquiry as required to determine if the allegation warrants further investigation;

- (ii) Terminate inquiry on allegations determined not to have merit, with documentation showing the basis for the determination;

- (iii) As needed, refer allegations for further investigation to an appropriate investigative function;

- (iv) Refer completed investigations to the servicing employee relations office of the employee accused of the prohibited reprisal; and

- (v) Maintain complete records of allegations received, inquiries terminated, investigations conducted, and actions taken on the basis of investigations, for purposes of making such reports as may be required by the Office of Human Resources Management (OHRM).

- (c) OHRM will develop forms for reporting information required from the Mission Areas in (b) above and will consolidate the reports in a Department Personnel Bulletin annually in January for the preceding calendar year.

#### 752-203 Reprisal panel.

- (a) Each Mission Area will establish one Reprisal Panel at its headquarters. Reprisal Panels are concerned only with reprisal allegations arising from EEO complaints. If consistent with efficiency of operations, an Under or Assistant Secretary of Agriculture will establish one Reprisal Panel for separate geographic areas.

An Under or Assistant Secretary may organize the Reprisal Panels on a Mission Area-wide basis, or he/she may require subordinate Heads of Office to organize them

within their respective organizations. Reprisal Panels will not have overlapping designated geographic areas. Each Reprisal Panel will work independently of all others.

There will not be a hierarchy of Reprisal Panels, and one Reprisal Panel will not review the work of any other Reprisal Panel. The Assistant Secretary for Administration will

establish a Reprisal Panel to consider allegations of reprisal made against a Head of Office. Allegations of reprisal made against the Assistant Secretary for Administration will be considered by a Reprisal Panel of officials from other Mission Areas.

(b) Each Reprisal Panel will consist of three persons:

(i) A Federal employee who should be from outside the Mission Area, Agency, or Staff Office of the employee alleging reprisal and who should, if possible, be trained in dispute resolution.

(ii) A Personnel Officer or other named representative of the Head of Office;  
and

(iii) An employee named by the Union when the Reprisal Panel is formed at the level of recognition of a bargaining agent (union) under the Federal Labor-Management Relations Statute, or otherwise an employee named by majority agreement of presidents of local chapters of all employee organizations. An "employee organization" is one that has met the requirements of Department Personnel Manual Chapter 252, Subchapter 1, "Professional Associations and Other Organizations." "Local chapter" means the part of an employee organization in the geographic area served by the Reprisal Panel.

(c) Reprisal Panels may be "standing" panels with permanent membership or on an "as needed" basis.

(d) When the Office of Civil Rights (OCR) issues a Notice Of Right To File A Formal Complaint (Notice) to an employee, it will provide a copy to the appropriate Mission Area Personnel Officer and Head of Office of the employee and supervisor.

(e) Within 45 days of receipt of the Notice from the counselor, the Reprisal Panel shall complete the following actions:

(i) Review the counselor's notice;

(ii) Conduct such inquiry as it deems necessary to determine if there is a prima facie case of reprisal made out and to determine whether the working conditions

of the employee should be adjusted while the equal employment opportunity complaint is processed; and

(iii) Make such recommendations to the Head of Office or designee as the Panel may deem appropriate under the given facts, and may include, but is not limited to, the following:

(A) Recommending that the complaint of reprisal has no basis and should not receive further administrative consideration by the Panel;

(B) Recommending that the employee and the supervisor or manager be

separated from working together during the processing of the equal employment opportunity complaint;

(C ) Recommending that the Mission Area, Agency, or Staff Office consider disciplinary action against the supervisor/manager in accordance with the USDA

Guide for Disciplinary Penalties (See Appendix B); and

(D) Recommending such other administrative actions as the Panel may deem appropriate.

(f) The Reprisal Panel may base recommendations only upon the record it develops.

(g) The Agency Head or his designee shall accept the recommendation of the Reprisal Panel unless to do so would require the Agency to violate law or existing regulation. The Secretary or designee of the Secretary may review and revise or overturn a recommendation of the Reprisal Panel under the following conditions:

(i) A request for review is signed by the Agency Head and Under Secretary/ Assistant Secretary to which the Agency Head reports, or by the Staff Office Director;

(ii) The request is based on adverse impact of the recommendation on efficiency of operations or budgetary constraints; and

(iii) The request fully sets forth, in writing, the facts supporting a review and does not consist merely of conclusive statements.

(h) The processes followed by the Reprisal Panel are separate from, and in addition to, EEO processes. No employee shall be denied any right because of the operation of the Reprisal Panel. However, the Reprisal Panel shall provide a copy of its file and recommendations in each case to OCR.

(i) Panel members may require instruction both as to the requirements of this procedure and as to how to evaluate reprisal allegations. It shall be the responsibility of Heads of Offices to ensure that appropriate instruction is provided. This may be accomplished individually or by groups, and in the manner most conducive to mission operations. For more on the Reprisal Panel, see Appendix C.

(j) For record keeping purposes, all recommendations made by Reprisal Panels will be submitted to the appropriate office established in accordance with 752-202(b).

(k) Authority for Reprisal Panel activities terminates upon the expiration date of this Bulletin. At or before the expiration of this Bulletin, activities

of the Reprisal Panels will be evaluated with reauthorization or modification of the Reprisal Panels dependent upon the results of the evaluation.

752-204           Employee relations.

(a)     The employee relations function within each Mission Area Personnel Office shall be responsible for analyzing investigations of alleged acts of prohibited reprisal, including recommendations from the Reprisal Panels, and for initiating such disciplinary or adverse actions as are appropriate.

(b)     Employee relations offices shall process disciplinary and adverse action cases based on allegations of reprisal on a priority basis, ahead of all other types of cases except violence in the workplace cases involving danger to employees and Department property and ahead of other assigned employee relations functions.

(c)     Employee relations personnel will process cases as close as possible to the minimum time frames permitted by adverse action statute and regulations, except where decisions of the Merit Systems Protection Board would dictate other practice.

(d)     Each employee relations function shall maintain accurate records of all cases it receives in accordance with this Bulletin and report on its actions to the investigative office established under 752-202(b) above.

(e)     OHRM will provide technical leadership to Mission Area Personnel Offices in processing disciplinary or adverse action cases based on allegations of prohibited reprisal.

#### APPENDIX A PROHIBITING AND DEFINING "REPRISAL AND RETALIATION"

Note: The information in this Appendix is not a complete list of relevant statutory and regulatory provisions.

##### I.     PROHIBITIONS AGAINST REPRISAL AND RETALIATION

##### A.     Federal Employment (29 C.F.R. 1614.101(b)).

No person shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 et seq.), the Equal Pay Act (29 U.S.C. 206(d)) or the Rehabilitation Act (29 U.S.C. 791 et seq.) or for participating

in any stage of administrative or judicial proceedings under those statutes.

B. Other unlawful employment practices (42 U.S.C. 2000e-3(a)).

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

C. Inspector General Act of 1978 ( 7(c )).

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

D. Voluntary Leave Bank Program (5 U.S.C. 6370).

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

(b) For the purpose of subsection (a) the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).



E. Family and medical leave (5 U.S.C. 6385).

(a) An employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under this subchapter.

(b) For the purpose of this section---

(1) the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or taking or threatening to take any reprisal (such as deprivation of appointment, promotion, or compensation) . . . .

F. Merit system principles (5 U.S.C. 2301(b)(9)).

Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences---

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

G. Prohibited personnel practices (5 U.S.C. 2302(b)).

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority --

\* \* \* \* \*

(3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;

\* \* \* \* \*

(8) take or fail to take, or threaten to take or fail to take, a personnel action

with respect to any employee or applicant for employment because of --

(A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences . . .

(i) a violation of any law, rule, or regulation, or . . .

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, --- if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences --

(i) a violation of any law, rule, or regulation, or

(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety,

(9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of---

(A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;

(B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);

(C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or

(D) for refusing to obey an order that would require the individual to violate a law; . . . .

Appendix B  
Excerpt from USDA Guide for Disciplinary Penalties

	PENALTY FOR	PENALTY
FOR	FIRST OFFENSE	SUBSEQUENT
TYPES OF MISCONDUCT		
OFFENSE		

11. DISCRIMINATORY PRACTICES (Penalty should take into consideration whether violation is willful/deliberate, or careless/negligent.)

b. Any reprisal or retaliation action  
against an individual involved in the  
EEO compliant process.                      5-Day Suspension to Removal  
Removal

13. PROHIBITED PERSONNEL PRACTICES (NOT ELSEWHERE COVERED.)

Abuse of authority and commission  
of a prohibited personnel practice  
covered by 5 U.S.C. 2302                      Letter of Reprimand to Removal  
Removal

APPENDIX C  
ROLES AND RESPONSIBILITIES FOR THE REPRISAL PANEL

Once an employee has been issued a Notice Of Right To File A Formal EEO  
Complaint (Notice), the role of this panel is to review the complaint  
of reprisal  
against USDA employees. The panel members should be unbiased and  
neutral.  
If panel members are unable to be neutral for a specific case, they  
should decline  
to review the case.

Panel members should review all documentation received from OCR in  
making  
a determination. Please note that panel members are not investigators.  
If  
additional information or clarification is deemed necessary, the panel  
members  
are responsible for the fact-finding necessary for a fair and equitable  
decision.  
The purpose of this panel is mainly fact-finding so as to come to a  
decision for  
the possible separation of employees from one another or the adjustment  
of  
working conditions to alleviate volatile or stressful situations. A  
reprisal panel,  
in making its recommendation, may rely on any information it obtains,  
both from  
the ongoing investigation of the EEO complaint or any other source.  
Reprisal  
panel members are not to wait for the completion of the EEO complaint  
to make  
a recommendation, but should do so within 45 days of receipt of a copy  
of the  
counselor's Notice, as provided in 752-203(e). The decision of the  
panel is

binding except as provided in 752-203(g).